THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.7717 of 2007

17.4.2007

Between:

Malla Kotamma, W/o.Peda Appanna

… Petitioner

AND

Polimerasetti Ramadevi, W/o.Babu Rambabu
And another

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.7717 of 2007

ORDER:

The petitioner was one of the candidates in the elections for Mandal Parishad Territorial Constituency members of Gavarapeta MPTC of Dagguluru. He lost the election held on 02.7.2006. First respondent was declared elected. Alleging that first respondent is not qualified as she did not complete 21 years of age, petitioner filed election petition being EOP No.49 of 2006 on the file of the Court of Senior Civil Judge, Narsapuram. After receiving notice, first respondent filed an interlocutory application being I.A.No.21 of 2007 praying the Election Tribunal to dismiss the election petition for non-compliance with provisions of Rule 5 of Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 (the Rules, for brevity). Learned Tribunal placed reliance on Division Bench judgment of this Court in **Anjamma v S.Pushpamma**[1] and allowed the interlocutory application, consequently dismissing the election petition. Aggrieved by the orders of learned Tribunal in I.A.No.21 of 2007, petitioner filed the instant writ petition to quash the same by issuing a writ of Certiorari.

Learned Counsel for the petitioner placed strong reliance on the decision of this Court in **Vijay Laxmi Sadho v Jagdish**[2] in support of contention that in view of the decision of the Supreme Court, the decision of Division Bench of this Court in **Anjamma** (supra) is no good law. Learned Counsel for first respondent/caveator opposes the same.

In **Anjamma** (supra), Division Bench of this Court considered the question whether Rule 5(ii) of the Rules mandates the Election

Tribunal to dismiss the election petition for not depositing Rs.200/- at the time of presentation of election petition. The conclusion of the Division Bench is as follows.

Rule 5(1) of the Rules, 1995 as extracted above clearly mandates that the petitioner shall deposit with it in cash a sum of Rs.100/- as security for the costs. Rule 5(ii) specifically says that if the provisions of sub-rule (i) are not complied with, the Election Tribunal shall dismiss the petition. Therefore, a combines reading of Rule 5(i) and (ii) mandate that whenever an election petition is presented, the petitioner shall deposit a sum of Rs.100/- with it. If the petitioner fails to comply with the same, the Election Tribunal shall reject the same for non-compliance. Even as per the finding of the tribunal, though it was returned for compliance, the same was not complied with within the period prescribed i.e., before expiry of 30 days for presentation of election petition, it is onlyafter expiry of thirty days, the amount was deposited by the petitioner. Once the mandatory provision is not complied with, the Tribunal has to only dismiss the petition.

Therefore, the point raised before the Election Tribunal as well as this Court is squarely covered by the decision of the Division Bench. The decision relied on by the petitioner in **Vijaya Laxmi Sadho** (supra) has no relevance to the issue for consideration. This Court does not find any infirmity in the impugned order.

The writ petition is misconceived and is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

April 17, 2007.

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[1] 2001(1) ALD 77 (DB) = 2001(1) ALT 235 (DB)

[2] AIR 2001 SC 600 = (2001) 2 SCC 247